

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ROBERT F. ROBERTS, SR.,

Plaintiff,

vs.

Case No. 19-3161-SAC

ROGER SOLDAN, et al.,

Defendants.

O R D E R

Plaintiff has informed the court of a change of address (Doc. No. 13) and the Clerk has mailed a copy of the Martinez report to that address. The court previously granted plaintiff time until December 23, 2019 to file a response to the report if he wished to do so. Doc. No. 12.

As it is unclear whether plaintiff received Doc. No. 12 (plaintiff indicates in Doc. No. 14 that he has not) and since his receipt of the Martinez report has been delayed, the court shall grant plaintiff time until January 10, 2020 to respond to the Martinez report if he wishes to do so. The court will also repeat what the court stated in Doc. No. 12 regarding Martinez reports.

The Tenth Circuit has stated:

[I]n particular circumstances the Martinez report may be considered part of the pleadings for purposes of Fed.R.Civ.P. 12(b). . . . [W]e have authorized the district court to require a Martinez report to develop a basis for determining whether a prisoner plaintiff has a possibly meritorious claim. The purpose of the Martinez report is to identify and clarify the issues

plaintiff raises in his complaint. It also aids the court in its broad reading of the pro se litigant's pleadings . . . by supplementing a plaintiff's often inadequate description of the practices that he contends are unconstitutional. When the plaintiff challenges a prison's policies or established procedures and the Martinez report's description of the policies or procedures remains undisputed after plaintiff has an opportunity to respond, we should, and will treat the portion of the Martinez report describing the policies or procedures like a written document that has been attached to plaintiff's complaint.

Hall v. Bellmon, 935 F.2d 1106, 1112-13 (10th Cir. 1991)(interior citations omitted). A Martinez report is treated more like an affidavit than a motion. See Dickey v. Merrick, 90 Fed.Appx. 535, 537 (10th Cir. 2003).

To repeat, plaintiff is granted time until January 10, 2020 to respond to the Martinez report if he wishes to do so.

IT IS SO ORDERED.

Dated this 20th day of December, 2019, at Topeka, Kansas.

s/Sam A. Crow _____
Sam A. Crow, U.S. District Senior Judge